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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1604

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,

Petitioner,

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING, FEDERAL COMMUNICATIONS COMMISSION, and UNITED STATES OF AMERICA,

Respondents.

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

The National Citizens Committee for Broadcasting (NCCB), in its opposing brief in Nos. 76-1471, 76-1521, 76-1595, 76-1604, 76-1624, and 76-1685, virtually ignores the constitutional questions and issues bearing on the correct role of the Federal Communications Commission (FCC) and the court of appeals in administering the Communications Act raised by the American Newspaper Pub-

lishers Association and other Petitioners. Instead, NCCB, conceding "the considerable impact of the decision" (Opp. at 7), presents the argument it would make on the merits, assuming certiorari should be granted.

Perhaps recognizing the weakness of its arguments on the merits, NCCB seems to fall back on the position that the time is not ripe for review by this Court. NCCB states "there will necessarily be a 'Third Report and Order'" by the FCC and, therefore, "[t]his Court need not review a clearly defective 'Second Report and Order.'" (Opp. at 14). NCCB's suggestion misrepresents the status of this case. In fact, the Second Report and Order is a final order of the FCC, and the court of appeals has finally disposed of the constitutional, statutory, and policy issues in the Second Report and Order which were appealed. While there may well be another order by the FCC if the proceeding is remanded to it, these issues will not be decided over again. The court of appeals has only left the FCC free to act within the narrow confines of *its own* policy determinations.

Moreover, if further proceedings were to be held by the FCC prior to a definitive resolution of the basic underlying questions regarding its authority and the policy it must follow, years of further litigation may take place "in the dark." Thus, there is no reason to

postpone this Court's review, and a pressing need for a resolution of the important issues raised prior to further action by the FCC.

Respectfully submitted,

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